

REMARKS

A summary of the status of the claims in the present response is presented below.

Claims 1, 4, 9, 10, 14, and 15-17 are currently amended.

Claims 2 and 3 are previously presented claims.

Claims 5-8, 11-13, and 18-20 are originally presented claims.

Claims 1-20 are thus currently pending in this Application.

The Official Action dated September 18, 2009 states that the declaration and supporting statement filed on May 12, 2006 under 37 CFR 1.131 was considered but is considered ineffective since the declaration was not filed by all individuals that constitute the inventor. Applicants submit a "Declaration Of Applicants Cary B. Cochenour and Craig G. Cochenour Under 37 CFR 1.131" that is signed by both of the joint inventors of this Application. Applicants enclose a Supporting Statement Of Witness To Factual Evidence. The Applicants' joint Declaration and the Supporting Statement of Witness To Factual Evidence establish the conception of the invention claimed in the above-captioned Application is prior to the effective date of U.S. Patent Application Publication No. US 2004/0195227 (Park) coupled with due diligence from prior to the reference date to a subsequent actual reduction to practice of a working full size physical invention successfully used by a geriatric dog on February 15, 2003, and the filing of Applicants' patent application on February 28, 2003. The Park reference is not relevant and is rendered moot. Applicants respectfully submit that for the above reasons that pending Claims 1-20, as amended, are in condition for allowance and such action is courteously requested at an early date.

Claim Rejection - 35 U.S.C. § 103(a)

Claims 1-5 and 7-20 were rejected under 35 U.S.C. 103(a) for allegedly being unpatentable over U.S. Patent Application Publication No. US 2004/0195227 (Park) in view of US Patent No. 5,516,189 (Ligeras). Applicants' above remarks are equally applicable at the present juncture. Applicants enclosed joint Declaration signed by each inventor and the enclosed Supporting Statement of Witness To Factual Evidence establish the date of conception of the invention claimed in this Application on or before

January 11, 2003 coupled with a diligent reduction to practice of a full size working invention on February 15, 2003. January 11, 2003 is a date that is prior to the effective date of the Park reference. The rejection based upon Park is moot. Applicants submit that Applicants' Claims 1-5 and 7-20 are not taught or suggested by Park in view of Ligeras.

Claim 6 was rejected under 35 U.S.C. §103 (a) as allegedly being unpatentable over Park (U.S. Patent Application Publication No. US 2004/0195227) in view of Ligeras as applied to Claims 1-5 and 7-20 and further in view of Goldston et al. (US Patent No. 5,303,485). The Declaration of joint Applicants, and the Supporting Statement of Witness To Factual Evidence attached hereto, and the remarks with regard to Park set forth hereinabove are equally applicable at this juncture. The rejection based upon Park is moot. Applicants submit that Applicants' Claim 6 is not taught or suggested by Park in view of Ligeras and further in view of Goldston et al.

Claims 1-5, 7-10, 13-17, and 20 were rejected under 35 U.S.C. § 103 (a) as allegedly being unpatentable over Owen et al. (US Patent No. 6,189,487) in view of Fristedt et al. (WO 02/06083, US Patent No. 7,134,715). Applicants have amended Claims 1, 4, 9, 10, and 14-17. Independent Claims 1, 14 and 15 are amended to recite (i) that the floor moves in a down and up direction (support for this amendment is found at page 4, lines 1-9, page 5, lines 13-24, page 6, lines 19-31 and page 7, lines 1-2, and page 8, lines 5-19), (ii) that the temperature source is in juxtaposition to the movable floor (support for this amendment is found at page 3, lines 1-3, and page 6, lines 3-5), and (iii) that the actuator element is a separate and non-integral component in relationship to the temperature source and that the actuator element is in juxtaposition to the floor or the temperature source (support for these amendments are found in the drawings, Figures 1 and 2, and at page 8, lines 3-7).

Owen is cited as disclosing an animal bed including a floor, heating element and electrical cord. Owen does not disclose a structure for automatic activation effected by weight of the animal. Applicants disagree with the Office Action's characterization of Fristedt et al. The Office Action cites Fristedt et al. for disclosing a similar device that includes a heating device and an occupant sensor to activate a heating device. The

Fristedt et al. heating device includes a thermostat to control the heating device. The Office Action states that it is obvious to add an actuator element, including a thermostat to the animal bed of Owens to automatically control the heating device. It is a mis-characterization of Fristedt et al. to say that Fristedt et al. is a similar device to the invention recited by the amended claims of the Applicants. Fristedt et al. discloses a vehicle seat heating arrangement having an occupant sensor arranged as an integrated component together with the heating device in the vehicle seat.. Fristedt et al. relies on the fact that the heating device and the occupant presence sensor are assembled in a laminated manner so as to form an integrated unit. The single unit of the heating device and occupant presence sensor are assembled as laminated layers by means of gluing or ironing. In contrast, independent Claims 1, 14 and 15, and dependent Claims 2-5, 7-10, 13, 16-17, and 20 which ultimately depend from Claim 1, 14, or 15, recite that the floor is movable in a down and up direction and that the actuator element is a separate and non-integrated component in relationship to the temperature source. Fristedt et al. does not disclose a floor that is movable and does not disclose a heating device that is not integrated with an occupant sensor. Because all of the limitations of Applicants' Claims 1-5, 7-10, 13-17, and 20, as amended, are not taught or suggested by the combination of Owen in view of Fristedt et al., Applicants submit that no prima facie case of obviousness exists. Applicants request that the rejection under 35 U.S.C. § 103 (a) over Owen in view of Fristedt et al. be withdrawn, and that now pending Claims 1-5, 7-10, 13-17, and 20, as amended, be reconsidered and allowed at an early date.

Claim 6 was rejected under 35 U.S.C. § 103 (a) as allegedly being unpatentable over Owen in view of Fristedt et al., as applied to Claim 1, and further in view of Smoczynski (GB 2,263,396) and Goldston et al. (US Patent No. 5,303,485). Applicants comments made above with regard to Owen in view of Fristedt et al. as applied to Claim 1 are equally applicable at the present juncture. The Office Action states that the combination of references fails to disclose the use of a the specific actuator. Smoczynski is relied upon for its disclosure of a microswitch. Goldston et al. is relied upon for its disclosure of the use of a transistor in place of a pressure sensitive switch. The Office Action states that it would have been obvious to provide a transistor as the actuator to

provide a more sophisticated switching means responsive to the presence or absence of the weight of a patient. Claim 6 depends from amended Claim 1 and includes all of the limitations of amended Claim 1. Because all of the limitations of Claim 6 are not taught or suggested by the combination of Owen in view of Fristedt et al., as applied to Claim 1, and further in view of Smoczynski and Goldston et al., Applicants submit that no prima facie case of obviousness exists. Applicants request that the rejection under 35 U.S.C. § 103(a) over Owen in view of Fristedt et al., as applied to Claim 1, and further in view of Smoczynski and Goldston et al. be withdrawn, and that pending Claim 6 be reconsidered and allowed.

Claims 11, 12, 18, and 19 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Owen in view of Fristedt et al. as applied to Claims 10 and 17 above, and further in view of Peebles et al. (US Patent No. 6,237,531). Applicants comments made above with regard to Owen in view of Fristedt et al. as applied to Claims 1, 10 and 17 are equally applicable at the present juncture. The Office Action states that the combination of references fails to disclose the specific structure of the animal bed including a wall and opening. Peebles et al. is relied upon for its disclosure of an animal bed having a wall and an opening. The Office Action states that it would have been obvious to provide an animal bed of Owen with the features of Peebles et al. Claims 11 and 12 ultimately depend from amended independent Claim 1 and include all of the limitations of amended Claim 1, and Claims 18 and 19 ultimately depend from amended independent Claim 15 and include all of the limitations of amended Claim 15. Because all of the limitations of Claims 11, 12, 18, and 19 are not taught or suggested by the combination of Owen in view of Fristedt et al., as applied to Claims 10 and 17, and further in view of Peebles et al., Applicants submit that no prima facie case of obviousness exists. Applicants request that the rejection under 35 USC 103(a) over Owen in view of Fristedt et al., as applied to Claims 10 and 17, and further in view of Peebles et al. be withdrawn, and that pending Claims 11, 12, 18, and 19 be reconsidered and allowed.

Applicants respectfully submit that the cited references do not teach or suggest the present invention, and that the subject matter of the claimed invention would not have

been obvious to one having ordinary skill in the art. For the above reasons, Applicants courteously request that the rejections under 35 U.S.C. § 103(a) be withdrawn and that all pending claims be allowed at an early date.

CONCLUSION

It is respectfully submitted that Applicants' pending Claims 1-20 illustrate a patentable patient activated temperature-controlled surface, animal bed, and method of providing comfort to a patient employing the patient activated temperature-controlled surface that are not taught or suggested by any of the art of record. Applicants respectfully submit that the Declaration of Applicants (including the Exhibits A - H) and Supporting Statement of Witness To Factual Evidence (including Exhibits A and B) attached hereto, and remarks set forth in this paper place this Application in a condition for allowance and such action is respectfully requested at an early date.

AUTHORIZATION

Applicants believe that no further government fees are due for this Response and Amendment.

The Commissioner is hereby authorized to charge any necessary additional fees associated with this paper to Deposit Account No. 02-4800.

Respectfully submitted,
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